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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,765	11/21/2003	Mekell Jiles	30521/3056	3103
4743	7590	12/08/2006	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			TRINH, MINH N	
			ART UNIT	PAPER NUMBER
			3729	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/719,765

Applicant(s)

JILES ET AL.

Examiner

Minh Trinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-31 and 34-42 is/are pending in the application.
- 4a) Of the above claim(s) 23-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/12/04, 6/13/06, 10/15/06; 5/14/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group II (claims 34-42) in the reply filed on 10/24/06 is acknowledged. The traversal is on the ground(s) that the examiner has not established a prima facie case of serious burden of examination of the inventions of Groups I and II together. This is not found persuasive because the examiner has, established a prima facie case having shown in prior Office action (refer paragraphs 1 & 2, that the inventions each has a separate classification and a separate field of search i.e., group of directed to a subassembly other than the assembly of Group II, and these invention have different mode of operation, functions and effects. In accordance with MPEP §803, the examiner has demonstrated that the inventions of Group I and II are each independent or distinct as claimed (as indicated in prior Office action, paragraph 1). Applicants' reasons therefore are not persuasive, because examination of the independent inventions herein would present a serious burden to the Examiner in as much as the searches are not coextensive and the art is quite prolific Accordingly, the requirement is repeated and **made FINAL**.

2. Claims 23-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention I, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/24/06.

***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: linkage assembly for transducer or the like.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the claims 41-42 is not clear because the elected invention is directed to an assembly i.e., a linkage assembly however, claims 41-42 contain limitations directed to a combination which do not further limit the claim linkage assembly such as the receiver motor, the diaphragm, etc as recited in these claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 34-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al (Pub. No. 2001/0012375).

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The Miller et al reference discloses a linkage assembly as a quadrilateral structure comprising:

- a strip 16 defining a plane (see Fig. 1);

- a first portion of the strip i.e., such as one of legs 16f, g that being plastically displaced in a first direction (upward) from the plane as simply as horizontal plane (see Fig. 2);

- a second portion of the strip i.e., such as 16e, and h that being plastically displaced in a second direction (downward ) from the plane and opposing the first direction (Fig. 2);

- the first and second portions defining a plurality of vertices 16a, 16b, a first of the vertices adapted to be coupled to an armature of the receiver and a second of the vertices being adapted to be coupled to a diaphragm 14 of the receiver; and a first leg

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member and a second leg member formed from the strip, and coupled to a third of the vertices and a fourth of the vertices (16c and 16d), respectively.

Limitation of claims 35-40 are also met by the Miller et al (see Figs. 1-2, depicts the assembly having met every aspect limitations of these claims.

As applied to claims 41-42, Miller as relied upon above does show a combination set forth in claims 41-42.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited for their teachings of linkage assembly for armature transducer or the like.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Trinh whose telephone number is (571) 272-4569. The examiner can normally be reached on Monday -Thursday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mt  
12/7/06



MINH TRINH  
PRIMARY EXAMINER